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In The
Supreme Court of the United States

DELBERT WILLIAMSON, *et al.*,
Petitioners,

v.

MAZDA MOTOR OF AMERICA, INC., *et al.*,
Respondents.

On Writ of Certiorari to the California Court of Appeal, Fourth Appellate District, Division Three

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank, law firm and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights, freedoms and structural safe-guards guaranteed by our Constitution.

CAC assists state and local officials in upholding valid and democratically enacted measures and historic common law remedies. CAC filed an *amicus* brief in *Wyeth v. Levine*, 129 S. Ct. 1187 (2009); over the last decade, CAC's predecessor organization, Community Rights Counsel, filed *amicus* briefs in preemption cases before this Court in support of many state and local laws.

CAC seeks to preserve the careful balance of state and federal power established by the Constitution and its Amendments. CAC thus has a strong interest in this case and the development of preemption law generally.

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[1] The parties' letters of consent to the filing of this brief have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

Under the text and history of the Constitution's Supremacy Clause, federal law trumps state law only to the extent a state law or remedy directly contradicts a valid federal enactment. This direct conflict can arise either because the federal law contains language expressly preempting state law or because it would be infeasible to comply with both federal law and the state law or remedy.

The Motor Vehicle Safety Act expressly preempts certain state statutes and regulations relating to safety standards, 49 U.S.C. § 30103(b)(1), but does *not* expressly preempt state-law damages actions, such as the common-law remedy sought by the Williamsons. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 867-68 (2000). Accordingly, this case falls under the second, "implied preemption" category.

Under this Court's implied preemption precedent, the California Court of Appeal clearly erred in finding the Williamsons' damages action preempted. *See Williamson v. Mazda Motor Co.*, 167 Cal. App. 4th 905, 913-14 (2008). From *Geier* to *Wyeth v. Levine*, 129 S. Ct. 1187 (2009), the Court has required a more direct conflict than is present in this case before displacing state law. This restrained approach to implied preemption accords with the text and history of the Constitution. *See generally* Caleb Nelson, *Preemption*, 86 VA. L. REV. 225 (2000).

Because the relevant 1989 Federal Motor Vehicle Safety Standard for rear-seat active restraints set a minimum floor rather than a regulatory ceiling, Mazda could have complied with both the federal safety standard and the more stringent standard of safety imposed by the California jury. As demonstrated by the Court's holding in *Geier* and its subsequent implied preemption decisions in *Sprietsma v. Mercury Marine*, 537 U.S. 51 (2002), and *Wyeth*, the National Highway Traffic Safety Administration's rear-seat safety belt Standard 208 does not meet the standards that the Supreme Court has set for establishing implied preemption.

ARGUMENT

I. THE TEXT AND HISTORY OF THE CONSTITUTION'S SUPREMACY CLAUSE SUPPORT IMPLIED PREEMPTION ONLY WHERE THERE IS A DIRECT CONFLICT BETWEEN FEDERAL AND STATE LAW.

The Constitution's text and history support implied preemption only in circumstances where there is a direct conflict between a state law or remedy and federal law. The Supremacy Clause of the Constitution provides that:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the

> supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2. The Court has applied the Supremacy Clause to preempt state laws that conflict with federal law. *E.g., Brown v. Hotel & Restaurant Employees & Bartenders Int'l Union Local 54*, 468 U.S. 491, 501 (1984) (explaining that federal preemption occurs "by direct operation of the Supremacy Clause").

The text of the Supremacy Clause makes "supreme" the "*Laws* of the United States made in Pursuance [of the Constitution]." U.S. CONST. art. VI, cl. 2 (emphasis added). Accordingly, displacing state law for broad, implied purposes or general policy reasons is contrary to the clear text of the Clause. Article VI allows preemption of state law only by enacted federal *law*, which requires express agreement among two legislative houses and two democratically-elected branches of government. *See* U.S. CONST. art. I, § 7; *INS v. Chadha*, 462 U.S. 919, 951 (1983) (holding that courts may not give effect to law that did not follow the "single, finely wrought and exhaustively considered, procedures" specified in the Constitution); *see also Thompson v. Thompson*, 484 U.S. 174, 191 (1988) (Scalia, J., concurring in the judgment) ("An enactment by implication cannot realistically be regarded as the product of the difficult lawmaking process our Constitution has prescribed.").

This is no mere formality: by providing for federal preemption only when required by duly enacted law, the Constitution ensures that the states' interests and federalism concerns are considered. The provision of equal state representation in the Senate in Article I, § 3, represents "a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty." THE FEDERALIST No. 62, 408 (James Madison) (B. Wright ed., 1961); *accord* THE FEDERALIST No. 43, *supra*, 315 (James Madison). To permit displacement of state law under a broad theory of implied preemption risks denying states their main "protect[ion] . . . from [federal] overreaching" and would circumvent "the principal means chosen by the Framers to ensure the role of the States in the federal system." *Garcia v. San Antonio Metro. Trans. Auth.*, 469 U.S. 528, 550-51 & n.11 (1985) (citing, *inter alia*, Herbert Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 COLUM. L. REV. 543 (1954)); *see also id.* at 556 ("[T]he built-in restraints that our system provides through state participation in federal governmental action . . . . ensures that laws that unduly burden the States will not be promulgated.").

In addition, the Framers intended the Supremacy Clause to serve an important function in establishing the relationship between the federal government and the individual states in our Constitution's new federalist system. As James

Madison noted, because the Articles of Confederation lacked a federal supremacy rule, "'[w]henever a law of a State happened to be repugnant to an act of Congress,' it 'will be at least questionable' which law should take priority, 'particularly when the latter is of posterior date to the former.'" James Madison, *Vices of the Political System of the United States* (Apr. 1787) 9 PAPERS OF JAMES MADISON 345, 352 (Robert A. Rutland & William M.E. Rachal eds., 1975). While the Supremacy Clause altered the substance of what was essentially a conflict-of-laws rule of temporal priority, making valid federal law supreme over a subsequently enacted state law, it did not affect its domain: both the traditional rule and its constitutional successor "come[] into play only when courts cannot apply both state and federal law, but instead must choose between them." Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 251 (2000). *See also* Viet D. Dinh, *Reassessing the Law of Pre-emption*, 88 GEO. L.J. 2085, 2087-88 (2000) (describing the Supremacy Clause as a "constitutional choice of law rule . . . that gives federal law precedence over conflicting state law").[2]

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[2] The Supremacy Clause also gave structure to our constitutional federalism by ensuring that valid treaties and federal statutes would be treated by the states as part and parcel of their own law, and not as the law of a foreign sovereign. *See* Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L.J. 1425, 1510 (1987); *see also* Lauren K. Robel, *Sovereignty and Democracy: The States' Obligations to Their Citizens Under Federal Statutory Law*, 78 IND. L.J. 543, 559 (2003). This aspect of the Supremacy Clause corrected deficiencies in the Articles of Confederation, which granted law- and treaty-making power to the United States Congress, but failed to make clear that these acts were

In other words, the Supremacy Clause was only intended to kick in when courts could not apply both federal and state law together.

Describing what the text of the Constitution provides with respect to preemption, Professor Nelson summarizes the meaning of the Supremacy Clause as follows:

> Taken as a whole, the Supremacy Clause says that courts must apply all valid rules of federal law. To the extent that applying state law would keep them from doing so, the Supremacy Clause requires courts to disregard the state rule and follow the federal one. But this is the extent of the preemption it requires.

Nelson, 86 VA. L. REV. at 252. In sum, the Constitution's Supremacy Clause established the appropriate hierarchy of substantive law, but was not intended to displace state law that could co-exist with its federal counterpart.

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automatically effective in the States. James Madison, *Vices of the Political System of the United States* (Apr. 1787), in 9 PAPERS OF JAMES MADISON 345, 352 (noting that in general "the acts of Cong[res]s [under the Articles of Confederation] . . . depen[d] for their execution on the will of the state legislatures").

II. SUPREME COURT PRECEDENT SETS AN APPROPRIATELY HIGH BAR FOR IMPLIED FEDERAL PREEMPTION.

As Chief Justice John Marshall observed, "[i]n our complex system, presenting the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers; and of numerous State governments, which retain and exercise all powers not delegated to the Union, contests respecting power must arise." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 204-05 (1824). This Court has developed preemption doctrines in order to assess and resolve these contests in light of the Supremacy Clause. U.S. CONST. art. VI, cl. 2.

The Supreme Court has observed that the Motor Vehicle Safety Act, which is at issue here, only impliedly preempts state common law when it "actually conflict[s]" with the federal statute and its regulations. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 869 (2000) (citing *Fid. Fed. Sav. & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153 (1982)). This "actual conflict" rule is in harmony with the Constitution's text and history, as discussed above. In the instant case, the California Court of Appeal's broad interpretation of *Geier*, however, impermissibly shifts the doctrine's standard away from actual conflict toward a lower threshold.

As Professor Nelson has recognized, the definition of the words underpinning our understanding of the implied preemption doctrine has changed over time, leading in some cases to the

erroneous assumption that the preemption threshold is lower than originally intended. Notably, this Court in *Gibbons v. Ogden* held that state laws should be preempted when they "interfere" with federal law. *Gibbons*, 22 U.S. (9 Wheat.) at 205. Professor Nelson has argued that interference had a different meaning to the Court in 1824, and does not suggest a broad theory of implied preemption:

> In the language of the day, "to interfere" could mean "to clash." Marshall's contemporaneous opinions frequently used the word in this sense; two things were said to "interfere with" each other when they were mutually exclusive or contradictory. In *Gibbons*, both the Court's ultimate holding and the context of the relevant passage indicate that Marshall had this meaning in mind.

Nelson, 86 VA. L. REV. at 267-68.

The Court's explication of its preemption doctrine in *Gibbons* supports Nelson's conclusion. Chief Justice Marshall wrote that:

> Since, however, in exercising the power of regulating their own purely internal affairs . . . the States may sometimes enact laws, the validity of which depends on their *interfering with, and being contrary to,* an act of Congress passed in pursuance of the [C]onstitution, the Court will enter upon the inquiry, whether the laws . . . have . . . come

> *into collision* with an act of Congress, and deprived a citizen of a right to which that act entitles him.

Gibbons, 22 U.S. (9 Wheat.) at 209-10 (emphasis added).

The Court considered "interference" to be synonymous with "collision" and "contrary to," which suggests that preemption only occurred when state and federal law stood in opposition to each other on the same issue. The Court has emphasized this high standard in subsequent cases, including in *Hines v. Davidson*, 312 U.S. 52, 67 (1941).

In *Hines*, the Court reviewed the language it had used to describe when state law should be preempted: "conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference." *Id.* The words with which "interference" is grouped validate this high standard; all suggest that the conflict between the state and federal laws must be actual and of serious consequence in order to trigger preemption. Even so, this Court in *Geier* recognized that the distinction between different articulations of implied preemption cannot be drawn easily; "varieties of 'conflict' . . . often shade one into the other." *Geier*, 529 U.S. at 874. In recognition of this, "[t]he Court has not previously driven a legal wedge – only a terminological one – between 'conflicts' that prevent or frustrate the accomplishment of a federal objective and 'conflicts'

that make it 'impossible' for private parties to comply with both state and federal law." *Id.* at 873.

Unfortunately, as lower courts began to hear implied preemption cases in the post-*Geier* era, it became clear that some courts were applying *Geier* more broadly than the Court intended. *See Carden v. Gen. Motors Corp.*, 509 F.3d 227 (5th Cir. 2007); *Sprietsma v. Mercury Marine*, 197 Ill. 2d 112 (2001). The Supreme Court corrected this course in *Spriestma v. Mercury Marine*, 537 U.S. 51 (2002), and again in *Wyeth v. Levine*, 129 S. Ct. 1187 (2009).

Sprietsma concerned the Federal Boat Safety Act, which, like the National Traffic and Motor Vehicle Safety Act, authorized a federal agency to promulgate safety standards. The Coast Guard, tasked with promulgating the rules, considered but did not require motor boats to install propeller guards. After Petitioner's wife was killed in a boating accident, Petitioner sued Mercury Marine for failing to install propeller guards, but the trial court dismissed the case and the Illinois Supreme Court affirmed the dismissal, relying on an incorrect interpretation of *Geier*. *Sprietsma*, 197 Ill. 2d at 125-26. While *Geier* certainly was controlling precedent, the holding in *Geier* should have counseled rejection of the preemption argument. This Court granted certiorari and reversed, clarifying that:

> The Coast Guard's decision *not* to impose a propeller guard requirement presents a sharp contrast to the decision of the

> Secretary of Transportation that was given preemptive effect in *Geier v. American Honda Motor Co.* As the Solicitor General had argued in that case, the promulgation of Federal Motor Vehicle Safety Standard (FMVSS) 208 embodied an affirmative 'policy judgment that safety would best be promoted if manufacturers installed *alternative* protection systems in their fleets rather than one particular system in every car.'

Sprietsma, 537 U.S. at 67 (citations omitted).

The Court distinguished only the fact pattern in *Sprietsma* from the fact pattern in *Geier*. The implied preemption doctrine rules of *Geier* still controlled – a rule that (1) saved from preemption state common-law rules, unless the common law presented an actual conflict with the federal regulation, and (2) held that federal minimum standards do not conflict with state common-law rules that have more stringent standards. *Geier*, 529 U.S. at 867-69. The Coast Guard, in opting not to require propeller guards, created a minimum standard that a state common-law rule might exceed by requiring propeller guard installation. Therefore, under *Geier*, the Supreme Court corrected the lower courts and held that the Petitioner in *Sprietsma* prevailed against an early motion to dismiss based upon a preemption claim. *Sprietsma*, 537 U.S. at 70.

In *Wyeth v. Levine*, 129 S. Ct. 1187 (2009), the Court again clarified the limited circumstances in which implied preemption may displace state law

or remedies. Applying *Geier*, the *Wyeth* Court distinguished the regulatory floor set by the Food and Drug Administration (FDA) for drug labels from the "variety and mix of devices" that the Department of Transportation sought in the regulation at issue in *Geier*. *Id.* at 1203 (citing *Geier*, 529 U.S. at 881). The Court held that no such conflict presented itself in *Wyeth*: although the FDA set reporting and labeling requirements for prescription drugs, its approval of a drug label did not preempt a state common-law tort claim that a patient was not adequately warned of the drug's risks. This Court observed that the FDA had never suggested that "state tort law stood as an obstacle to its statutory mission," *Wyeth*, 129 S. Ct. at 1202, and that the labeling requirement established only minimum standards. *Id.*

So, too, here. Under this Court's longstanding preemption precedents, including *Geier* and *Wyeth*, the Williamsons' common-law action against Mazda Motor for failing to install an appropriately safe seatbelt in the Williamsons' minivan is not preempted. The United States' *amicus curiae* briefs filed in this case and in *Geier* support this proposition. Contrary to the lower court's ruling that *Geier* requires preemption in this case, the United States' position in both *Williamson* and *Geier* illustrates that *Geier* does not, in fact, mandate preemption here.

Although the United States supported preemption in its *amicus curiae* brief in *Geier* and has opposed preemption in its brief in support of granting certiorari in the instant case, both these

briefs articulate a narrow view of implied preemption. *Compare* Brief for the United States as *Amicus Curiae* at 11, 15, *Williamson v. Mazda Motor*, No. 08-1314 (2009), *with* Brief for the United States as *Amicus Curiae* Supporting Affirmance, at 6, 21, *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000) (No. 98-1811). As the United States noted in its *Geier* brief, "state tort law does not conflict with a federal 'minimum standard' merely because state law imposes a more stringent requirement." U.S. *Geier* Brief, at 21.

The distinction between the fact patterns and regulatory history of *Williamson* and *Geier* is emphasized by comparing the United States' *amicus* briefs in the two cases. For example, in its *amicus curiae* brief in *Geier*, the government emphasized NHTSA's intent that car manufacturers offer a *variety* of passive restraint options in order to overcome public resistance to safety devices in cars, encourage ongoing research into restraint devices, and therefore improve car safety. It recognized that conflict preemption is necessary to avoid "actual" conflicts between federal and state law, and that the specific desire to create an assortment of gradually phased-in passive restraint options would actually conflict with a state judgment requiring a *particular* restraint. U.S. *Geier* Brief, at 10.

Indeed, the U.S. brief in *Geier* even presented a hypothetical, in which NHTSA's decision not to require the installation of anti-lock brakes would not preempt a state common-law rule that imposes liability on manufacturers that did not install anti-

lock brakes. *Id.* This hypothetical mirrors the facts in the instant case. According to the logic of *Geier* and the government's own interpretation of the implied preemption doctrine, NHTSA's decision not to require the installation of Type 2 seatbelts in rear inboard seats should not preempt a state common-law rule that imposes liability on manufacturers that did not install Type 2 seatbelts in the rear inboard seat.

* * *

Geier, *Sprietsma*, and *Wyeth* have together defined modern implied preemption doctrine. The limited nature of the implied preemption doctrine suggested in these cases accords with the text and history of the Supremacy Clause, which supports displacing state law or remedies only where they actually conflict with federal law. Because there is no actual conflict between the minimum safety standard for rear seatbelts in Standard 208 and the more stringent safety standard imposed in this case by the California jury, the Court should not impliedly preempt the state tort action pursued by the Williamsons.

CONCLUSION

For the foregoing reasons, the decision of the California Court of Appeal should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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